IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT Knoxville
February 26, 2007 Session

BETTY LEONA CRONAN V. CLEVELAND CHAIR COMPANY

Direct Appeal from the Circuit Court for Bradley County
No. V-96-634 Lawrence Howard Puckett, Judge
Filed June 13, 2007

No. E2006-01570-WC-R3-WC - Mailed May 8, 2007

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Tennessee Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court findings of fact and conclusions of law. The trial court ordered the employer to provide medical treatment pursuant to a court approved settlement for a 1995 injury and awarded attorneys' fees pursuant to Tennessee Code Annotated section 50-6-204(b)(2). The employer has appealed contending that the trial court erred because the employee's current condition is caused by age-related degenerative arthritis and not by the 1995 work accident and that the attorney fee award was not proved to be reasonable in amount. After a careful review of the record we conclude that the trial court should be affirmed.

Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right;
Judgment of the Circuit Court Affirmed

J. S. (STEVE) DANIEL, Sr. J., delivered the opinion of the court, in which WILLIAM M. BARKER, C.J., and JON KERRY BLACKWOOD, Sr. J., joined.

David C. Nagle, Chattanooga, Tennessee, for the appellant, Cleveland Chair Company.

Randy Sellers, Cleveland, Tennessee, for the appellee, Betty Leona Cronan.

OPINION

I. Facts and Procedural History

Ms. Betty Cronan worked for Cleveland Chair Company, hereinafter referred to as "employer," for a total of twenty-nine years. In 1995, during the course and scope of her employment, Ms. Cronan slipped and fell, twisting her left knee. According to the testimony of Ms. Cronan, she had never missed a day of work or experienced pain in her left knee prior to this work-related injury. Our review of the record reveals that Ms. Cronan testified that prior to this injury she had never had any difficulty with her left knee in squatting, bending or engaging in day-to-day work

activities. On July 17, 1995, Ms. Cronan underwent arthroscopic surgery to repair a suspected meniscal tear and during the course of the surgery, arthritis to the inner aspect of the left knee was noted by Dr. James Patterson Stone who was the treating physician approved by the employer. In 1996, both Dr. Stone and Dr. Stanley Payne opined that Ms. Cronan had suffered a ten-percent impairment to the left lower extremity as a result of the work-related injury. According to Dr. Stone's testimony, his impairment rating in 1996 included consideration of Ms. Cronan's range of motion and arthritic condition. Although not represented by counsel, Ms. Cronan settled her case in 1996 by entering into an order that settled her claim for the lump sum of $9,000. The order of the court approving the settlement providing that "Cleveland Chair Company agrees to pay the employee, Betty Leona Cronan, the sum of $9,000.00 in full, final, and complete settlement of the cause." This award was to be paid in a lump sum and the concluded by providing "It is further ORDERED that the medical remain open in accordance with the statute."

Ms. Cronan returned to work for the employer until 2003 when she left that employment. The record reveals that in 1997 her left knee caused her pain and she returned to the approved treating physician, Dr. Stone. He treated her conservatively with a nonsteroidal medication, Oruvail. This medication had also been used in 1995 at the time of the arthroscopy for the observed arthritis in the inner aspect of her knee. At the time of this treatment, Dr. Stone did not receive any history of any other traumatic incident that precipitated the 1997 visit. The medical care which Ms. Cronan received in 1997 was provided by the employer.

On March 4, 2005, Ms. Cronan returned to her treating physician, Dr. Stone, complaining that she had experienced over approximately the one to two years preceding the visit, some return of pain to her left knee. She had also had episodes of the knee giving way and popping. At the time of her visit she was taking over-the-counter Tylenol to control pain and she did not report any new accident, injury or trauma. Dr. Stone's testimony was presented at trial by way of deposition. He testified that the knee was swollen and Ms. Cronan had soreness to the inner aspect of the knee. Her range of motion was lacking five degrees to the complete extension and would flex to a hundred degrees. Dr. Stone described the knee as having mild crepitation with the range of motion. An x-ray was taken which did show evidence of narrowing on the inner aspect of the knee, the medial joint space, as well as some degenerative changes beneath the kneecap and femur area. Dr. Stone in reviewing the X-ray, thought she had evidence of arthritis on her left knee. The evaluation was consistent with either arthritis, loose bodies in the knee or meniscal tear. Ms. Cronan was next seen April 27, 2005, and her knee was aspirated. Her next visit was June 5, 2005, when she presented herself with complaints of pain in the knee, particularly after walking. She continued to complain of the knee buckling or giving way. Dr. Stone, after the June visit, stated that the conditions that he had observed "appeared to be an exacerbation of that underlying condition from her work-related accident." When asked to explain what he meant by this report, Dr. Stone stated:

> It is – it was then and, I suppose it's still my impression that her treatment in 1995 was for a work-related problem. That work-related problem culminated in the arthroscopy, which documented the arthritis to her inner aspect of her knee that we had documented and

> treated back in 1995, and I felt that her current problem was an exacerbation or flare-up of the symptoms of what had been documented previously.

Having concluded that the knee problem was caused by either the arthritis, loose bodies moving in the knee or a meniscus tear, Dr. Stone discussed the possibility of performing another arthroscopic surgery on the knee to address any of these potential problems. At the time the request was made, Ms. Cronan was sixty-nine years of age, 5'4" in height and weighed 195 pounds. She had not worked for the employer in the prior two years. The last approved medical care had occurred in 1997, better than eight years before the request. Dr. Stone agreed that it was not unusual for a person this age to have arthritis without having a previous work-related injury. It was also Dr. Stone's opinion that the predominant problem in her knee was the arthritis which increases as an individual ages.

When presented with a request for this additional medical care, the employer refused. The employer insisted that the arthritis was an independent intervening cause of Ms. Cronan's problems or that she had had a subsequent nonwork-related injury which was an intervening cause. As a result of the refusal, Ms. Cronan hired an attorney who filed a motion seeking medical treatment in the trial court. After a hearing in which the court heard two witnesses, Ms. Cronan as a live witness and Dr. Stone by way of deposition, the court ordered the employer to pay for Dr. Stone's medical treatment. The trial court stated in the order

> that the 1995 injury which was found to be work-related and therefore compensable under the workers' compensation laws, included Plaintiff's then arthritic condition, which was exacerbated by the 1995 accident itself, and further that the natural progression of said injury relating to the recommended treatment by Dr. J. Patterson Stone is compensable and shall be paid as Ordered . . .

The court went on to find that there was no independent intervening cause and "therefore Cleveland Chair Company shall authorize and pay for treatment by Dr. J. Patterson Stone, as has been recommended by him for the treatment of Ms. Cronan's left knee." Subsequent to the order requiring the payment of additional medical expenses, a motion was filed for the award of attorney fees by Ms. Cronan's attorney. After a hearing on that motion, the court ordered the payment of attorney fees of $3,152.50. However, there is no record of this hearing in the appellate record.

II. Standard of Review

Review of the findings of fact made by the trial court is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2005). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. The standard governing appellate review of the findings of fact of a trial judge

requires this "panel to examine in depth the trial court's factual findings and conclusions." GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. Workers' Comp. Panel 2001). When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of testimony are involved, the appellate court must extend considerable deference to the trial court's factual findings. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002); Townsend v. State, 826 S.W.2d 434, 437 (Tenn. 1992). Our standard of review of questions of law is de novo without a presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 826 (Tenn. 2003). When medical testimony is presented by deposition, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. Cleek v. Wal-Mart Stores, Inc., 19 S.W.3d 770, 774 (Tenn. 2000); Houser v. Bi-Lo, Inc., 36 S.W.3d 68, 71 (Tenn. 2001).

III. Award of Future Medicals

The issue before us is the propriety of the trial court's award of medical care to Ms. Cronan under the court approved settlement for her 1995 left leg injury. An employee is entitled under the provisions of Tennessee Code Annotated section 50-6-204(a) (1991) to recover any reasonable and necessary medical expenses in the future which may be incurred as a result of a compensable injury. Lindsey v. Strohs Companies, Inc., 830 S.W.2d 899, 903 (Tenn. 1992). The procedure to be followed in seeking future medical benefits is the one employed by the trial court in this case and which was approved in the case of Roark v. Liberty Mut. Ins. Co., 793 S.W.2d 932, 935 (Tenn. 1990). The procedure approved in that case required the employee to make an application for any such future medical expenses to the trial court and the trial court thereafter was required to take evidence and then to determine whether the employer or its insurance carrier was liable for the payment of those additional expenses.

In this case, the employer contends that the arthritic condition is a separate event or injury which was not compensable in 1995, when the original claim was made. The employer further argues that the workers' compensation law is inappropriately being used to provide medical insurance to Ms. Crohan. The record does not support those contentions. The original treating physician, Dr. Stone, at the time of the initial arthroscopic surgery found evidence of an arthritic condition in the inner left knee and those findings were a part if his initial disability ratings associated with his 10% impairment for the 1995 injury. When a trial court makes a determination that a compensable injury includes an aspect of arthritis, the question of whether subsequent medical treatment for the arthritic condition is compensable as future medicals must be determined at a later time when the claim is made. Underwood v. Liberty Mut. Ins. Co., 782 S.W.2d 175, 176 (Tenn. 1989). Our review of the record leads us to the conclusion that the trial court did not err in awarding additional benefits to Ms. Cronan because the initial treating physician had identified arthritis in the inner space of the left knee at the time of his initial treatment and testified at the time of the motion for the future medical care that Ms. Cronan's current symptoms were an extension or exacerbation of the conditions that he had initially treated.

IV. Independent Intervening Cause

The employer also contends that it should not be liable for additional medical expenses based on independent intervening causes, i.e., unexplained development of additional arthritis, floating bodies in the knee or meniscus tear in the left knee, Employer's position is that these conditions were caused by an independent intervening event. In Tennessee '"when the primary injury is shown to have risen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional conduct."' Wheeler v. Glens Falls Ins. Co., 513 S.W.2d 179, 182 (Tenn. 1974). Citing 1 Larson, Workmen's Compensation Law, Section 13.00 at 3-279. The trial court made a specific finding that there was no independent intervening cause which would relieve the employer of the responsibility of future medicals. We cannot find the trial court in error in making this determination. The record contains no evidence of any subsequent injury or event which would provide a basis for the subsequent request for medical care. In addition, there is no showing of any intentional act on the part of the employee that would relieve the employer of the responsibility for future medical expenses. We find this assignment of error to be without merit.

V. Attorney Fees

The employer complained that the trial court erred in the award of attorney fees in that there was no proof at the trial court of the reasonableness of those fees. Tennessee Code Annotated section 50-6-204(b)(2) authorizes the trial court to award attorney fees and reasonable costs when the employer fails to furnish appropriate medical care. The record on appeal fails to develop this issue as the record consists of only the trial court's order, the attorney's motions for the fees and a copy of his invoice. With such a scant record, we are unable to conclude that the attorney fee award was unreasonable. It was the employer's responsibility to perfect a record for appellate review. Tenn. R. App. P. 24. We find the employer failed in this regard and bears the responsibility for the deficiency in the record. Tenn. R. App. P. 36(a). Therefore, we find no error on the part of the trial court in the award of attorney fees.

VI. Conclusion

After a thorough review of the record, we conclude that the trial court did not err in ordering future medical care and attorney's fees for Ms. Cronan. This case is to be remanded for enforcement of the trial court's order. Costs are assessed against Cleveland Chair Company for which execution may issue if necessary.

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J. S. DANIEL, SENIOR JUDGE

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AT KNOXVILLE, TENNESSEE

BETTY LEONA CRONAN V. CLEVELAND CHAIR COMPANY

Bradley County Circuit Court

No. V-96-634

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No. E2006- 01570-WC-R3-WC

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellant, Cleveland Chair Company, for which execution may issue if necessary.